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Legal Aspects of Social Security Benefits and Child Support

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Session Description

- Have you heard people (even on your caseload) kick around the words SSI and SSD? Do you know the difference between them and what Social Security benefits are? How do they affect calculating child support? And what do you need to know when you want to enforce an order? When can you close your case? Come with your questions and your experience as we all learn more about the impact of Social Security benefits and this key area of child support law and case management.

Overview of the Session

- Definitions
- Basics
- Role of the Obligor
- Case Closure
- Establishment
- Enforcement
- Lump Sums Application to Arrears
- How to Credit Monthly Family Benefits
- Implications in Intergovernmental Cases

Definitions

Definitions

- CP/NCP
- SSA
- SSDI
- SSR
- SSI-Supplemental Security Income
- Insured
- Family Benefits (auxiliary, derivative)

Basics

Basics

- Domestic Violence Survivors—new SSN
  - Requires evidence to SSA
  - Defined as harassed, abused, life endangered
  - Available to abused adult and his/her children

Basics

- Title II Benefits (What are you going to do?)
  - Disability, retirement, survivors
  - Insureds are adults
  - Family benefit
  - Benefit starts in the 6-month following disability
  - Source is insurance program paid in by insured and employer
  - Income and attachable for child support

Basics

- Title XVI Benefits, SSI-Supplemental Security Income
  - Little to no recent work wages
  - Children may qualify based on child’s disability
  - Benefit is available in first month of disability
  - Source is general revenue of federal government
  - Not income on guidelines and not attachable for child support

Basics

- Title XVI Benefits
  - SSA sets the benefit amount each October
  - 2022 SSI Individual: $841/month
  - 2022 SSI Couple: $1,261/month
  - Can be supplemented by the state
  - Does not generate a family benefit

Basics

- Dependents/Children
  - Title II: Spouses, children, adult disabled children, or parents of insured
  - Title XVI: Not applicable

Basics

- Spouses
  - 62 or older
  - If disabled, 50
  - If caring for insured’s child (younger than 16)
  - Unmarried divorced spouse eligible if married at least 10 years

Basics

- Children
  - Unmarried
  - Biological and adopted
  - Step
  - Younger than 18 unless still in high school, then 19
  - Disabled before the age of 22

Basics

- Survivors
  - Spouse
  - Children
  - Insured’s Parents
    - 62 or older
    - Dependent upon the Insured for at least half of their support

Role of the Obligor

Role of the Obligor

- Insured
- Disabled Child
- Widow/er
- Unmarried Ex-Spouse
- Caretaker of child younger than 16

Establishment

Establishment

- Title II Benefits on the Guidelines
  - Benefit amount to worker is income for purposes of calculating child support *Burns v. Edwards*, 367 N.J. Super. 29, 842 A.2d 186 (App. Div. 2004)
  - Children's Title II benefits received from another's report (state law)
    - Included in guidelines as income of the insured parent (Indiana)
    - Not included as the insured parent's income (Missouri)
    - Both states give the insured parent a credit for the benefit amount

Establishment

- Title XVI Benefits on the Guidelines
  - Insured
    - Benefit amount is not considered income for purposes of calculating child support and when it's the sole source of income, income cannot be imputed to that disabled parent. 45 C.F.R. § 302.56(c)(1)." Burns v. Edwards, 367 N.J. Super. 29, 842 A.2d 186 (App. Div. 2004)
  - Children's Title XVI benefits on self account
    - Does not offset parent's obligation to support. *Gifford v. Benjamin*, 383 N.J. Super. 516, 520, 892 A.2d 738, 740, 2006 N.J. Super.

Enforcement

Enforcement

- Title II
  - SSDI is attachable for child support purposes, even if the support entitlement has been assigned to the State
  - Attachment of Social Security Benefits, DCL-00-103, Oct 6, 2000
  - June 9, 2020, Final Rule amended at 45 CFR §307.11(c)(3) prevents garnishing NCP's financial accounts when ncp receives SSI and SSDI/SSR benefits
  - Gives States the option to prevent sending IWO to SSA for the SSDI/SSR portion of benefit when NCP is also receiving SSI

Enforcement

- Title XVI-SSI
  - Cannot be attached to pay child support, even if they are deposited in a bank account with non-SSI funds if the SSI funds are traceable to Social Security
  - Attachment of Social Security Benefits, DCL-00-103, Oct 6, 2000
  - Garnishment of Supplemental Security Income Benefits, DCL-13-06, February 27, 2013
  - Garnishment of Federal Payments for Child Support Obligations, PIQ-09-01, August 25, 2009

Enforcement

- Case closure rules
  - 45 CFR §303.11(b)(9)
  - State option: Close when the NCP receives SSI benefits only **OR** when NCP receives SSI and SSD (concurrent SSI and Title II)

How to Credit Monthly Family Benefits to Current Support

How to Credit Monthly Family Benefits

- When to give insured NCP credit for family benefit received directly by the CP—with a Motion to Modify
  - Impacts the financial resources of the family
  - Insured entitled to a credit
  - Puts CP on notice of the benefit and prevents overpayment
  - *In re Marriage of Robinson*, 651 P.2d 454 (Colo.App.) 1982.
  - *In re Marriage of Wright*, 924 P.2d 1207, 1996 Colo. App. LEXIS 256, 20 BTR 1237

Crediting Monthly Family Benefits—M2M

- When does it start when a Motion to Modify is filed?
- Retroactive only to the date the CP was served with the Motion to Modify
- NCP's relief is limited to the service of motion, 42 U.S.C. §666
- OR
- Retroactive to the date the benefits began
- Title II benefits should be an exception and credit back to date family benefits began if criteria is met, *Settle v. Settle*, 208 W. Va. 310, 540 S.E.2d 178 (2000)

Crediting Monthly Family Benefits—Start

- Automatically give the NCP credit
- Absent any other relevant facts, no need to modify
- Permitting CP to receive family benefits and all of child support order is an unreasonable windfall and a *de facto* modification
  - *Board. v. Board*, 690 S.W.2d 380, 381 (Ky. 1985).
- SSDI benefits are paid because of the Insured's disability and serve as a substitute for the Insured's earnings. A credit for family benefits paid directly does not retroactively modify the Insured NCP's monthly CS order; it merely changes the source of the payment
  - *Crago v. Donovan*, 594 N.W.2d 726, (SD.1999).

Crediting When the Benefits Do Not Match the Order

- Benefits are more than the child support order
  - Excess is considered gift and if there are arrears, send IWO to SSA for arrears payment.
    - See *CSEA v. Doe*, 990 P.2d 1158 (Hawai'i App. 1998); *In re Marriage of Robinson*, 651 P.2d 454, 455-456 (Colo.App. 1982); *Weaks v. Weaks*, 821 S.W. 2d 503 (Mo. 1991).
- Benefits are less than the child support order
  - Agency sends an IWO to SSA to collect the difference plus a payment towards the arrears.
  - Except: Satisfaction
    - *Potter v. Potter*, 169 N.J. Super. 140, 404 A.2d 352 (App. Div. 1979) (NJ Supreme Court ruled that the NCP's AB lump sum paid to children, though the monthly AB amount was less than the court-ordered support, satisfied the monthly cs judgment in full.)

Crediting Benefits—Issues

- How many children or dependents are there now?
- Has the insured lost the benefits?
  - Lapse
  - Only lost by insured—dependent benefits remain
    - Incarceration
    - Warrant
    - Violating parole/probation

Lump Sums—Application to Arrears

Lump Sums—Application to Arrears

- SSI – not attachable, not an issue
- Retirement and Survivors benefits have known dates – usually not a lump sum issue
- SSDI—is the lump sum issue

How does this lump sum issue happen?

- 18-24 months from application to hearing determination
- Start date of payments is in the past
- Both insured and family benefits get paid for past period in a lump sum
- Lump sums are not paid at same time
- State laws determine how lump sums are applied

Lump Sums—Application to Arrears

- How to apply the lump sum to the arrears
  - Particularly
  - Dollar for dollar
- -

Particularly

- Children's auxiliary lump sum award should be applied only to arrears which accrued during the time period for which the benefit was paid
  - *Swaney v. State of Wyoming, Department of Family Services, Child Support Enforcement*, 256 P.3d 514, 516-517 (Wyo. 2011); *In re Marriage of Hohmann* 274 P.3d 27 (Kan.App. 2012);
- Any lump sum retirement or disability payments due to the retirement or disability of the noncustodial parent…paid for a period of time that precedes the date of such benefit date eligibility, or any amount in excess of the established child support order or judgment, must be deemed a gratuity to the child."
  - C.R.S. §14-10-115(11)(d) (Colorado)

Dollar for Dollar

- Equity remedies are a special blend of what is necessary, what is fair, and what is workable."
  - *Lemon v. Kurtzman*, 411 U.S. 192, 200, 93 S.Ct. 1463, 1469, 36 L.Ed.2d 151, 161 (1973)."
- Arguments
  - Title II family payments are derivative benefits of the insured and paid because of the insured's credits and benefit amount
  - SDU distribution rules for payments
  - No incentive to pay while waiting for disability

Crediting Lump Sums

- Should CPs be required to pay back overages if NCP has no arrears?
- Yes—Courts have discretion to order a credit and even a recoupment to a NCP from the family benefit lump sum if there were no arrears at the time of the lump sum
  - *C.D.G. v. N.J.S.*, 469 S.W.3d 413 (Ky. 2015)
    - This case also states that Title II retirement benefits are treated like Title II disability payments; can recoup if facts support it
- No—The funds belong to the child, not the NCP, and the child has committed no inequitable conduct nor been unjustly enriched.
  - *Keith v. Purvis*, 982 So.2d 1033 (Miss. App. 2008): *Steel v. Hardwick*, 551 S.E.2d 42 (WV 2001).

Should CPs be required to pay back overages if NCP has no arrears?

- Maybe—A Court may consider, but is not required to, grant a credit to a child support obligor when the lump sum family benefit duplicates child support paid.
  - *Stephenson v. Papineau*, 358 P3d. 86 (Kan. 2015). See *Rosenbaum v. Shaw*, 459 P.3d 467, 2020 and *In re Marriage of Allen*, 386 P.3d 1287, 2016 Ariz. App. that cite and follow *Stephenson.*

IV-D Agency's Role in Applying for Family Benefits

- How active should the IV-D agency be to get family benefits flowing for the child?
  - Outreach to educate
  - Condition of NCP's probation or contempt
  - Confidentiality issues?
  - If CP fails to file, is it non-cooperation?
    - CA: statutory requirement for the CP to cooperate
  - Should IV-D agency have standing in a IV-D case to apply?

Implications in Intergovernmental Cases

Implications in Intergovernmental Cases

- Registered for Modification vs. for Enforcement
- Challenges
  - Need to know other states' policies and laws
    - Application to arrears
    - Case closure rules
- Automated systems need to be monitored

Wrap Up and Q&A

Title II (Do)

- Income for guidelines and attachable
- Can provide family benefits
- Recipient is eligible for Medicare after 2 years of disability
- Watch out for lump sum issues

Title XVI

- Not income for guidelines and not attachable
- Will not provide family benefits
- Recipient is eligible for Medicaid immediately
- 2021 SSI Individual: $841/month
- No dependents and no lump sum issues

Wrap Up / Q & A

- Investigate and Ask!
- Anyone may be a Title II beneficiary
- Today's number of dependents
- Why a parent is receiving SSI, but less than the maximum amount
- Get their Verification Letter / SS Statement

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thank you!


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